

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Complaint of BellSouth Telecommunications, Inc. against Miami-Dade County for alleged operation of a telecommunications company in violation of Florida statutes and Commission rules.

DOCKET NO. 050257-TL
ORDER NO. PSC-07-0176-PCO-TL
ISSUED: February 23, 2007

ORDER OVERRULING COUNTY'S OBJECTIONS

I. Case Background

On April 13, 2005, BellSouth Telecommunications, Inc. (BellSouth) filed its Complaint regarding the operation of a telecommunications company in violation of applicable Florida Statutes and Commission rules against Miami-Dade County (County). The County filed its Answer on May 24, 2005.

On January 4, 2007, the parties filed their Joint Final Exhibit List with Objections. On January 11, 2007, BellSouth filed its Response to the County's Objections to BellSouth's Exhibits on the Final Exhibit List. This Order addresses the County's Objections to certain BellSouth exhibits identified in the final Exhibit List.

II. Parties' Arguments

Miami-Dade County's Objections

The County objects to BellSouth Exhibit Nos. 4, 48, 50, 70, 78, 81, 103, 104, 114, 131, 168, and 205. The County contends that each of these exhibits lacks relevancy and/or is repetitive. The County objects to Exhibit Nos. 82 and 99 based on relevance, hearsay and/or lack of foundation.

BellSouth's Response

In its Response, BellSouth agrees to withdraw Exhibit Nos. 5, 48, 50, 70, 78, and 81. With respect to the County's relevancy objections regarding Exhibit Nos. 82, 103, 104, 114, 131, 168 and 205, BellSouth contends that this Commission has acknowledged that administrative proceedings are not subject to the same strict evidentiary standards used in trial courts. See In Re Sprint-Florida, Inc., Docket No. 030396-TP, Order No. PSC-03-1014-PCO-TP (September, 9, 2003). BellSouth argues that this Commission has employed a long standing practice of including evidence for consideration in its decision-making, rather than excluding it. BellSouth asserts further that the exhibits the County seeks to exclude are directly relevant to the issues to

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be decided by this Commission, and the County has not claimed it would suffer any prejudice if the exhibits are included in the record.

With regard to the County's hearsay objections to Exhibit Nos. 82 and 99, BellSouth asserts that the Florida Administrative Procedure Act expressly permits the submission of hearsay evidence. See §120.57(1)(c), Florida Statutes (2005). BellSouth contends that the only limitation on hearsay evidence is that bare hearsay evidence cannot be the only basis for a finding of fact unless the hearsay would otherwise be admissible over objection in a civil action; hearsay evidence may supplement or support other evidence. BellSouth argues that both exhibits supplement and explain other exhibits introduced by BellSouth.

III. Decision

Section 120.569(2)(g), Florida Statutes, states that in administrative hearings to determine the substantial interests of the parties:

Irrelevant, immaterial, or unduly repetitious evidence shall be excluded, but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible, whether or not such evidence would be admissible in the courts of Florida. Any part of the evidence may be received in written form, and all testimony of parties and witnesses shall be made under oath.

Upon consideration, I find that BellSouth has sufficiently established the relevancy of the pertinent exhibits. Furthermore, as noted by BellSouth, pursuant to §120.57(1)(c), Florida Statutes, hearsay evidence may supplement or support other evidence in an administrative proceeding.

Therefore, based upon applicable law and review of the pertinent exhibits, I find it reasonable and appropriate to overrule the County's Objections to BellSouth's Exhibit Nos. 82, 99, 103, 104, 114, 131, 168 and 205, as set forth in the Joint Final Exhibit List. This Commission has the judgment to weigh the evidence presented, and shall accord it the weight that it is due, if any.

Based upon the foregoing, it is

ORDERED by Commissioner Matthew M. Carter II, as Prehearing Officer, that Miami-Dade County's Objections to BellSouth Telecommunications, Inc.'s Exhibit Nos. 82, 99, 103, 104, 114, 131, 168 and 205, as set forth in the Joint Final Exhibit List are hereby overruled.

By ORDER of Commissioner Matthew M. Carter II, as Prehearing Officer, this 23rd day of February, 2007.



MATTHEW M. CARTER II
Commissioner and Prehearing Officer

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.